



# **Private Sector Housing Civil Penalties Policy**

**for the Regulation of Housing Standards**

**Updated 1 May 2020**

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## 1. Introduction

- 1.1 Northampton Borough Council is committed to improving standards in private sector housing, bringing empty homes back into use and ensuring that all private rented accommodation is well managed, properly maintained and safe and habitable.
- 1.2 Although Northampton has some excellent landlords<sup>1</sup>, it also has a significant number of criminal, rogue and irresponsible landlords who knowingly rent out accommodation that is unlicensed, substandard and/or unsafe.
- 1.3 The Council shares the Government's desire to support good landlords who provide decent well-maintained homes, and to crack down on those unscrupulous landlords who are flouting the law and seeking to profit from their non-compliance.
- 1.4 Northampton's approach to housing enforcement is based on the principle that it should be the offender (rather than good, responsible landlords or the local council tax payers) who pays for the cost of housing enforcement and that no-one who breaks the law should gain a financial advantage over someone who does not.
- 1.5 This approach – a key feature of the Council's Private Sector Housing Enforcement Policy and Fees & Charges Policy since February 2016 – enjoys widespread support from local landlords who want the Council to create a level playing field for all landlords by dealing robustly with criminal, rogue and irresponsible landlords.
- 1.6 The Council welcomes the action that the Government is taking to crack down on criminal, rogue and irresponsible landlords and it is committed to making full use of its new powers to improve standards in Northampton's private rented sector.
- 1.7 Since 6 April 2017, local housing authorities have had the power to impose civil penalties (financial penalties) of up to £30,000 per offence on individuals and organisations, as an alternative to prosecution.
- 1.8 Northampton's intelligence-led, targeted approach to housing enforcement – together with its expectation that all members of its Housing Enforcement Team will study for the Advanced Professional Certificate in Investigative Practice – means that the Council is well placed to competently detect and investigate possible offences and, where appropriate, to impose a civil penalty as an alternative to prosecution.
- 1.9 This Private Sector Housing Civil Penalties Policy contains information about civil penalties and how the Council is planning to use them. It takes into account the statutory guidance that has been issued by the Government under Schedule 9 of the Housing and Planning Act 2016, and should be read in conjunction with the Council's Private Sector Housing Enforcement Policy.
- 1.10 This Policy replaces the previous Private Sector Housing Civil Penalties Policy (1 August 2017) and relates to all civil penalties issued on or after 1 May 2020.

**Note** <sup>1</sup> – In this Policy, the term “landlords” also includes “property agents”, “managing agents” and “letting agents” unless otherwise specified

## 2. The Government's intentions and expectations

2.1 The Government has said that it wants to support good landlords who provide decent, well-maintained homes, and avoid unnecessary regulation which increases costs for landlords and pushes up rents for tenants.

2.2 However, it has also pledged to crack down on rogue landlords who flout the law and knowingly rent out unsafe and substandard accommodation.

2.3 The Housing and Planning Act 2016 introduced a number of measures to help local authorities deal more robustly with criminal, rogue and irresponsible landlords:

- **Civil penalties of up to £30,000** as an alternative to prosecution for certain specified offences (came into force on 6 April 2017);
- **Extension of rent repayment orders** to cover illegal eviction, breach of a banning order, failure to comply with an improvement notice and certain other specified offences (came into force on 6 April 2017);
- **Database of rogue landlords and property agents** who have been convicted of certain offences or received multiple civil penalties (came into force in April 2018);
- **Banning orders** for the most serious and prolific offenders (came into force in April 2018).

2.4 When introducing civil penalties through the Housing and Planning Act 2016, Government Ministers made it very clear that they expect local housing authorities to use their new powers robustly as a way of clamping down on rogue landlords.

2.5 In the House of Commons, Marcus Jones MP (Parliamentary Under Secretary of State at the DCLG) explained why the maximum penalty is £30,000:

**“ [it is necessary to] clamp down on rogue landlords, so the civil penalty [has been increased] up to a maximum of £30,000”.**

**“ It is important [to] raise the level of civil penalty to £30,000, because a smaller fine may not be significant enough for landlords who flout the law to think seriously about their behaviour and provide good quality, private sector rented accommodation for their tenants”.**

2.6 Although the Government states (in its guidance) that, generally, it would expect the maximum civil penalty of £30,000 to be “reserved for the very worst offenders”, it recommends that the actual amount imposed in any case should reflect the severity of the offence and take into account the landlord's previous record of offending.

2.7 The Government recommends that, in order to ensure that the civil penalty is set at an appropriate level, local housing authorities should consider the following factors:

**① The severity of the offence**

The more serious the offence, the higher the civil penalty should be.

**② The culpability and track record of the offender**

A higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew, or ought to have known, that they were in breach of their legal responsibilities. Landlords are running a business and should be expected to be aware of their legal obligations.

**③ The harm caused to the tenant**

This is a very important factor when determining the level of penalty. The greater the harm or the potential for harm (this may be as perceived by the tenant), the higher the amount should be when the local housing authority imposes a civil penalty.

**④ The punishment of the offender**

A civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at a high enough level to help ensure that it has a real economic impact on the offender and demonstrates the consequences of not complying with their responsibilities.

**⑤ Whether it will deter the offender from repeating the offence**

The ultimate goal is to prevent any further offending and help ensure that the landlord fully complies with all of their legal responsibilities in future. The level of the penalty should therefore be set at a high enough level such that it is likely to deter the offender from repeating the offence.

**⑥ Whether it will deter others from committing the offence**

While the fact that someone has received a civil penalty will not be in the public domain, it is possible that other landlords in the local area will become aware through informal channels when someone has received a civil penalty. An important part of deterrence is the realisation that (a) the local housing authority is proactive in levying civil penalties where the need to do so exists and (b) that the level of civil penalty will be set at a high enough level to both punish the offender and deter repeat offending.

**⑦ Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence**

The guiding principle here should be to ensure that the offender does not benefit as a result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed.

- 2.8 The Government's practice of empowering local authorities to impose financial penalties on offenders is reflected in other legislation and regulations, including The Smoke and Carbon Monoxide Alarm (England) Regulations 2015, and the Tenants Fees Act 2019.
- 2.9 This Private Sector Housing Civil Penalties Policy describes Northampton Borough Council's approach to the imposition of financial penalties in respect of all regulatory matters relating to private sector housing.

### **3. Offences covered by Civil Penalties**

#### **3.1 Housing Act 2004**

3.1.1 The power given to local authorities to impose a civil penalty as an alternative to prosecution for certain specified housing offences was introduced by section 126 and Schedule 9 of the Housing and Planning Act 2016.

3.1.2 Civil penalties are intended to be used against landlords who are in breach of one or more of the sections of the Housing Act 2004 listed below ("relevant offences" for the purposes of the Housing Act 2004):

- **Section 30** – Failure to comply with an Improvement Notice
- **Section 72** – Offences in relation to licensing of Houses in Multiple Occupation
- **Section 95** – Offences in relation to licensing of houses under Part 3 of the Act
- **Section 139** – Offences of contravention of an overcrowding notice
- **Section 234** – Failure to comply with management regulations in respect of Houses in Multiple Occupation

#### **3.2 The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014**

3.2.1 Civil penalties are intended to be used against landlords who are required to belong to a Redress Scheme and are in breach of Article 3 and/or Article 5 of the above Order:

- **Article 3** – Failure of the requirement to be a member of a Redress Scheme if undertaking lettings agency work.
- **Article 5** – Failure of the requirement to be a member of a Redress Scheme if undertaking property management work.

3.2.2 Failure to comply with the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 will result in the Council imposing a civil penalty of up to £5,000 for each offence.

#### **3.3 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015**

3.3.1 Civil penalties are intended to be used against landlords who fail to comply with a remedial notice requiring them to install appropriate smoke and/or carbon monoxide detection under the 2015 Regulations.

- 3.3.2 Failure to comply with the Smoke and Carbon Monoxide Alarm (England) Regulations 2015 will result in the Council imposing a financial penalty (or more than one penalty if there is a continuing failure) and, if necessary, the Council will undertake the installation of appropriate smoke and/or carbon monoxide detection as 'works in default'.
- 3.3.3 Although it is for the Council to determine the size of the financial penalty imposed, the penalty must not exceed £5,000. This penalty is in addition to the costs the Council is entitled to recover in relation to the remedial action it has carried out.
- 3.3.4 The Regulations require the Council to issue a statement of principles regarding the determination of the financial penalty value. For the avoidance of doubt, this Private Sector Housing Civil Penalties Policy is the Council's statement of principles.

### **3.4 Tenant Fees Act 2019**

3.4.1 Civil penalties are intended to be used against landlords who are in breach of Section 8 and/or Section 12 of the Tenants Fees Act 2019:

- **Section 8** – Failure to comply with Section 1 (prohibitions of landlords), Section 2 (prohibitions of letting agents) or Schedule 2 (the holding of deposits). The penalty must not exceed £5,000.
- **Section 12** – A further breach of Section 1 (prohibitions of landlords), Section 2 (prohibitions of letting agents) or Schedule 2 (the holding of deposits) within five years. The penalty may exceed £5,000 but must not exceed £30,000.

### **3.5 The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019**

3.5.1 Civil penalties are intended to be used against landlords who are in breach of the requirement to belong to a Client Money Protection Scheme and/or ensure that information about the scheme is available to tenants and at properties:

- **Regulation 6** – Failure of a property agent to belong to a Client Money Protection Scheme (regulation 3). The penalty must not exceed £30,000.
- **Regulation 7** – Failure of a property agent to comply with requirements to ensure information regarding client money protection is available at private rented properties, and made available to tenants (regulation 4). The penalty must not exceed £5,000.

### **3.6 The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020**

3.6.1 Civil penalties are intended to be used against landlords who fail to undertake the necessary inspections and repairs in relation to the electrical system in private rented accommodation.

- 3.6.2 Although it is for the Council to determine the size of the financial penalty imposed, the penalty must not exceed £30,000. More than one penalty can be imposed in the event of a continuing failure. Any financial penalty is in addition to the costs that the Council is entitled to recover in relation to the remedial action it has carried out.

## **Purpose of the Civil Penalties Policy**

- 4.1 Local housing authorities have the power to impose civil penalties of up to £30,000 on individuals and organisations as an alternative to prosecution.
- 4.2 The purpose of this Private Sector Housing Civil Penalties Policy is to describe how the Council will use its powers and how it will determine the size of each civil penalty.
- 4.3 The Council considers that the approach promoted by the Housing Act 2004 and reflected in the 9-stage assessment process set out in this Civil Penalties Policy strikes the balance between harm, culpability, punishment and deterrent.
- 4.4 The decision on whether to prosecute or impose a civil penalty for the offence will be guided by the Council's Private Sector Housing Enforcement Policy.
- 4.5 This Civil Penalties Policy is designed to ensure transparency, consistency and fairness in how and when civil penalties are imposed. Complementing the Housing Enforcement Policy, it will play a significant role in helping the Council to create a level playing field for all landlords by dealing robustly with criminal, rogue and irresponsible landlords.

## **5. Principles of Civil Penalties**

### **General considerations**

- 5.1 Northampton Borough Council will continue to take robust action against those landlords that flout the law, and it will ensure that its use of civil penalties is consistent, appropriate, proportionate and fair.
- 5.2 Civil penalties can only be used as an alternative to prosecution. This means that, if a civil penalty has already been imposed, the offender cannot be prosecuted for the same offence. Likewise, a person who has been (or is being) prosecuted for a particular offence cannot be issued with a civil penalty for the same offence.
- 5.3 Where the Council is in a position to prosecute a letting / managing agent and/or landlord for a relevant housing offence, it has the option of imposing a civil penalty on them as an alternative to prosecution.
- 5.4 Where a letting / managing agent and landlord have committed the same offence, the Council can impose a civil penalty on both of them, as an alternative to prosecution. The level of the civil penalty imposed on each offender may differ, depending on the circumstances of the case.

### **Principles underpinning civil penalty action**

- 5.5 All of the Private Sector Housing Team's enforcement activity will be:
- **Targeted** – Enforcement action will target the properties and people that pose the greatest risk, including the owners and landlords that evade licensing and regulation, and those whose properties cause a nuisance or put people's health and safety at risk.

- **Proportionate** – Enforcement action will be proportionate and reflect the nature, scale and seriousness of any breach or non-compliance.
- **Fair and objective** – Enforcement action will be based on the individual circumstances of the case, taking all available facts into account. Officers will carry out investigations with a balanced and open mind.
- **Transparent** – Enforcement action will be undertaken in accordance with clearly defined policies and procedures that are readily available. All communications will be easy to understand, with clear reasons being given for any enforcement action taken.
- **Consistent** – Enforcement action will be undertaken by well-trained investigators, and the Private Sector Housing Team will ensure consistency in the interpretation and enforcement of legislation, work with other regulatory agencies and share and develop good practice.
- **Accountable** – Enforcement action will be undertaken in a responsible manner that has a clear purpose. Where appropriate, the Private Sector Housing Team will work closely with landlords, tenants and other stakeholders that have an interest in private sector housing.

### **Deciding on an appropriate sanction**

- 5.6 The criminal standard of proof is required to be met in order to justify either the imposition of a civil penalty or a prosecution in the Magistrates' Court for a relevant housing offence (see paragraph 3.1.2). This means that, before taking formal action, the Council needs to satisfy itself beyond reasonable doubt that, if the case were to be prosecuted in the Magistrates' Court, a person's conduct amounted to a relevant housing offence for the purposes of the Housing Act 2004 or legislation identified in sections 3.2 – 3.6 of this Civil Penalties Policy.
- 5.7 To achieve a conviction in the Magistrates' Court, the Council must be able to prove beyond reasonable doubt that a relevant housing offence has been committed by the accused. The same principle applies in respect of civil penalties issued in accordance with section 249A and Schedule 13A of the Housing Act 2004 so, where a civil penalty is imposed and an appeal is subsequently made to the First-Tier Tribunal Property Chamber, the Council will need to be able to prove to the Tribunal that the relevant housing offence has been committed beyond a reasonable doubt.
- 5.8 Prosecution may be the most appropriate option where an offence is particularly serious or where the offender has committed similar offences in the past. However, that does not mean that civil penalties may not be issued in cases where serious offences may have been committed and the Council believes that the most disruptive sanction to impose on a criminal, rogue or irresponsible landlord is a financial penalty (or penalties if there have been several breaches) rather than prosecution.
- 5.9 The use of civil penalties (and rent repayment orders) will not only prevent the businesses of criminal, rogue and irresponsible landlords from profiteering from illegal practices and risking the safety of their tenants, but it will also demonstrate the Council's commitment to ensuring that it is offenders (rather than good, responsible landlords or the local council tax payers) who pay for the cost of housing enforcement in the private rented sector.

- 5.10 Income received from civil penalties will be retained by the Council to support its statutory enforcement activities, and its efforts to raise standards, in Northampton's private rented sector.

### **Benefits to the local economy**

- 5.11 Northampton Borough Council aims to create neighbourhoods of choice: areas where people want to live, bring up their children and work. Maintaining healthy, safe and well-regulated housing will benefit the local economy.

## **6. Regulation of Private Sector Housing**

### **Dealing with complaints**

- 6.1 The Private Sector Housing Team will respond to complaints from tenants and other residents about private housing, prioritising the complaints on the basis of an assessment of the risk and seriousness. If enforcement action is necessary, a variety of regulatory powers may be used to address and resolve the problem.

### **Housing, Health and Safety Rating System (“HHSRS”)**

- 6.2 The HHSRS is set out in Part 1 of the Housing Act 2004. It is a method of assessing how likely it is that the condition of a property will cause an unacceptable hazard to the health of the occupant(s). There are two categories of possible hazards:

- **Category 1 hazards** represent a serious danger to health and the Council has a duty to take appropriate action to deal with these.
- **Category 2 hazards** represent a lesser danger and, although it has a power rather than a duty, the Council will exercise its power to reduce category 2 hazards through appropriate action.

- 6.3 In most cases, the Council will follow a pre-formal enforcement action process in which it will seek to work with landlords and letting / managing agents to reduce hazards. However, it will avoid actions that may encourage owners, landlords and agents to be non-compliant with the requirements of the Housing Act 2004 and the Management of Houses in Multiple Occupation (England) Regulations 2006, such as carrying out costly works in default where it may be difficult for the Council to recover its costs.

- 6.4 Charges will be made for any formal enforcement action that the Council takes (see separate Private Sector Housing Fees & Charges Policy for further information).

### **Houses in Multiple Occupation (HMOs)**

- 6.5 In Northampton, there are many hundreds of Houses in Multiple Occupation: properties that are occupied by more than one household that share facilities.

- 6.6 As HMOs are deemed to pose a higher risk to the safety of their occupants than single family homes, their conditions, facilities and management are regulated. Some HMOs are subject to licensing:

- **Mandatory HMO Licensing** – An HMO licence is required for HMOs that are occupied by 5 or more persons who are sharing facilities and comprise 2 or more households.

- **Additional HMO Licensing** – An HMO licence is required for HMOs that are situated in the Additional HMO licensing area and are occupied by at least 3 persons who are sharing facilities and comprise 2 or more households. Additional HMO licensing only applies to specific parts of Northampton.

- 6.7 The HMO licensing regime includes arrangements for assessing the suitability of the premises for the number of occupants, including the adequacy of the amenities. It also provides for the assessment of the fitness of a person to be the licence holder and the potential management arrangements of the premises.
- 6.8 It is a relevant housing criminal offence if a person controlling or managing an HMO does not have the required licence. Failure to comply with any condition attached to a licence is also a relevant housing offence. The Council will consider all available enforcement options when dealing with unlicensed HMOs and breaches of the HMO licence conditions.
- 6.9 The Council will vigorously pursue anyone who is controlling or managing a licensable HMO without a licence and, where appropriate, it will impose civil penalties on them or pursue their prosecution.
- 6.10 Where a non-licensable HMO is being badly managed and/or is in a poor state of repair, the Housing Enforcement Team will prioritise it for action, based on a risk assessment.

### **Overcrowding**

- 6.11 Overcrowding is a difficult issue to deal with because, unlike other hazards, there is often very little that the landlord can do to resolve the problem unless the tenant has moved other people into the accommodation since the start of the tenancy.
- 6.12 In cases of severe overcrowding, the Council will explore the housing options available to the tenant, including a move to alternative accommodation.

### **Empty properties**

- 6.13 There is a high demand for accommodation in Northampton. As well as being a wasted source of housing, empty properties can be an eyesore, damage adjoining properties, blight neighbourhoods and attract anti-social behaviour.
- 6.14 The Council will identify, risk assess and prioritise long-term, problematic and nuisance empty properties, using the full range of informal and formal action (including enforced sales and compulsory purchase) to bring them back into use.

## **7. Determining the level of the Civil Penalty**

### **Factors that will be taken into account**

- 7.1 Generally, the maximum civil penalties will be reserved for the very worst offenders. The actual amount levied in any particular case will reflect the severity of the offence and take account of any previous relevant housing offences committed by the landlord or letting / managing agent.

7.2 In order to ensure that the civil penalty is set at an appropriate level, the Council will consider the following factors (described in more detail in Paragraph 2.7 above) that the Government has identified, in its statutory guidance, as being pertinent:

- ① The severity of the offence
- ② The culpability and track record of the offender
- ③ The harm caused to the tenant
- ④ The punishment of the offender
- ⑤ Whether it will defer the offender from repeating the offence
- ⑥ Whether it will deter others from committing the offence
- ⑦ Whether it will remove any financial benefit the offender may have obtained as a result of committing the offence

7.3 The final factor is an overarching one and, after all the other factors have been considered and applied, the Council will need to ensure that the civil penalty that is set removes the financial benefit that has been gained from committing the offence.

### **Northampton's 9-stage process**

7.4 After having regard to the Government's guidance on the methodology to use in setting the level of civil penalty, Northampton Borough Council has devised its own 9-stage process for determining the level of civil penalty to impose.

7.5 The first seven stages in the Council's 9-stage process are included in a '**Civil Penalty Scoring Matrix**' (see Pages 16 – 19) and the last two stages relate to the handling of multiple offences and the checks carried out before the 'Notice of Intent' is issued:

### **STAGE ONE – Culpability of the offender**

When assessing the culpability of the offender, the Council will consider a range of matters, including (but not limited to) whether or not the evidence shows that the offence was committed deliberately, how long the offence continued, whether or not the offence was repeated and whether or not the offence was premeditated.

The Council will also take into account the fact that letting accommodation is a business activity that is designed to make a profit and it should therefore be treated like any other business. Ignorance of the law is not an excuse for non-compliance with statutory requirements and duties.

Letting / managing agents and landlords with large property portfolios – together with those who are accredited and/or are members of professional associations – will be expected to have more knowledge and experience, so will be considered to be more culpable. For this part of the 'Scoring Matrix', the Council will apply a double weighting for Stage One where the offence is committed by a letting agent, a managing agent or a portfolio landlord who has a portfolio of more than five properties.

As a successful prosecution of an offender who breaches a Banning Order can result in the most severe punishment, the offender's score for Stage One will also be increased by 10 if the offender has breached a Banning Order.

## **STAGE TWO – Seriousness of the offence and the level of harm caused**

When assessing the seriousness of the offence and the level of harm it has caused, the Council will consider the following:

- The number of people affected;
- The nature and extent of the actual or potential impact on the victim(s) and whether or not it is serious, long-term, life-changing or potentially fatal;
- The vulnerability of the victim(s): children, vulnerable adults and people with protected characteristics under the Equalities Act 2010);
- The actual or potential harm to the surrounding area or community; and
- The level of punishment that can be imposed under the law. All of the offences carry a potentially unlimited (maximum) fine and breaching a Banning Order may result in a prison sentence of up to 51 weeks.

As the Council considers this aspect of the assessment to be particularly significant, it has doubled the weighting for Stage Two in order to reflect its seriousness.

## **STAGE THREE – Punishment of the offender**

When considering the punishment that should be imposed on the offender, the Council will take the following into account:

- Any attempts that have been made to cover up evidence of the offence, mislead Officers or harass occupants and witnesses.
- The landlord and/or letting / managing agent's refusal to accept and/or act on the advice and recommendations of the Council or another enforcement agency in relation to their responsibilities as a landlord / agent; and
- The relationship between the offence and other crime (such as illegal eviction, harassment, environmental crimes, modern slavery, prostitution and the production and distribution of illegal drugs).

## **STAGE FOUR – Removal of any financial benefit gained from committing the offence(s)**

When assessing the financial benefit that the landlord and/or letting / managing agent has gained from committing the offence(s), the Council will take into account any financial benefit arising from the commission of the offence(s).

Subject to the maximum level of £30,000 per offence and providing there is evidence of such financial benefit, the Council will consider whether it would be appropriate to impose a level of civil penalty which would be greater than the financial benefit gained from committing the offence.

As the Council considers this aspect of the assessment to be particularly significant, it has doubled the weighting for Stage Four in order to reflect its significance.

## **STAGE FIVE - Deterring the offender from repeating the offence and others from committing similar offences**

When determining the level of the civil penalty, the Council will give consideration to whether or not the level of civil penalty that is imposed will act as a deterrent to the offender and others.

Where this is unlikely, the Council will consider whether it would be more appropriate to prosecute the offender instead.

## **STAGE SIX – Assessment of assets and income**

When determining the level of the civil penalty, the Council will take into account any representations made by the offender regarding their income, assets and ability to pay, adjusting the level of the penalty accordingly where appropriate.

However, where such representations are made, the penalty will not automatically be revised downwards simply because an offender has (or claims to have) a low income.

The value of an offender's assets – which will include their full rental portfolio – and their income will be considered when determining an appropriate level of civil penalty.

For example, a landlord who has a large property portfolio and a low income may initially be assessed as being able to afford to pay a low level civil penalty but may have their civil penalty adjusted upwards when the value of their assets is taken into account.

## **STAGE SEVEN – Mitigation**

When determining the level of the civil penalty, the Council will consider any mitigating factors during the assessment process. Examples may include the following:

- The offender acts voluntarily to remedy the problem
- The offender co-operates fully with the investigation
- The offenders had a good track record of maintaining property and complying with legislation and statutory standards prior to the offence(s)
- The offender self-reports (for failing to license their HMO, for example), co-operates with the Council and accepts responsibility for the offence
- The offender has a mental disorder or learning disability and this is linked to the offence that has been committed
- The offender has a serious medical condition(s) that requires urgent, intensive or long-term treatment and this is linked to the offence that has been committed.
- The offender's is young and lacks maturity
- Any other mitigating factors that the offender wants the Council to take into account when determining the level of civil penalty.

The offender will also have the opportunity to inform the Council (during the 'Notice of Intent' stage) of any other mitigating factors they believe are relevant. The Council expects all requests for mitigation to be accompanied by supporting evidence.

## **STAGE EIGHT – Totality principle**

When determining the level of the civil penalty, the Council will apply the principle of totality if there is a possibility that more than one civil penalty will be imposed.

Where there are multiple offences resulting from the same incident or conduct, the Council will assess each offence, using the 'Scoring Matrix'. After aggregating the penalties, the Council may decide that it is appropriate in the circumstances to issue one civil penalty that reflects the most serious of the offences relating to the incident or conduct. Where the aggregate total exceeds the maximum civil penalty that can be imposed, the Council may find it appropriate to consider prosecution rather than issue a civil penalty.

Where there are multiple offences resulting from separate incidents or conduct, the Council will assess each offence individually, using the 'Scoring Matrix', and apply separate civil penalties where it is proportionate to do so.

## **STAGE NINE – Review and check**

Before a 'Notice of Intent' is issued, the process and level of civil penalty will be reviewed and checked with the Council's in-house Legal Services team and the Housing Enforcement Manager.

The purpose of this review is to ensure that the process has been applied correctly and the level of civil penalty is reasonable and proportionate.

## CIVIL PENALTY SCORING MATRIX

### STAGE ONE – CULPABILITY OF THE OFFENDER

(Double the score if the offender is a letting agent, managing agent or a portfolio landlord with more than 5 properties.  
Add 10 if the offender has breached a Banning Order)

Not applicable (Score = 0)	Minor (Score = 5)	Moderate (Score = 10)	Serious (Score = 15)	Severe (Score = 20)	TOTAL
Short term offence, no premeditation and no previous history.	First time offence. The offence has been ongoing for a short time. Minor previous breaches which may include a repeat of the current offence.	Second or third time offender. No premeditation. The offence has been ongoing for a moderate period of time. A case history of non-cooperation and relevant prior offending which may include a repeat of the current offence.	Multiple offender. Some premeditation. The offence has been ongoing for a significant period of time. A case history of non-cooperation and relevant prior offending including a repeat of this offence.	Serial offender (10 or more times). Premeditation. The offence has been ongoing for a significant period of time. A case history of non-cooperation and relevant prior offending including a repeat of this offence.	
<b>Breach of Banning Order?</b>					
<b>TOTAL</b>					

## STAGE TWO – SERIOUSNESS OF THE OFFENCE AND THE LEVEL OF HARM CAUSED

Not applicable (Score = 0)	Minor (Score = 10)	Moderate (Score = 20)	Serious (Score = 30)	Severe (Score = 40)	TOTAL
Very little or no harm caused. One victim household. No vulnerable occupants.	Low-level health risk(s) / harm(s) identified. One victim household. No vulnerable occupants.	Moderate-level health risk(s) / harms(s) identified. Two to four victim households. Vulnerable occupants potentially exposed.	Severe level health risk(s) / harm(s) identified. Two to four victim households.	Severe level – health risk(s) identified. Five or more victim households.	

## STAGE THREE – PUNISHMENT OF THE OFFENDER

Not applicable (Score = 0)	Minor (Score = 5)	Moderate (Score = 10)	Serious (Score = 15)	Severe (Score = 20)	TOTAL
No other crime, no attempt to pervert the course of justice, and a willingness to adhere to advice.	Minor previous breaches, no attempt to pervert the course of justice, and a willingness to adhere to advice.	Minor previous breaches. Offender made attempt(s) to pervert the course of justice and is unwilling to cooperate.	Significant other crime. Offender made attempts to pervert the course of justice and is hostile to cooperation.	Severe harm resulting from other crime. Offender made attempts to pervert the course of justice, and is hostile to cooperation.	

## STAGE FOUR – REMOVAL OF ANY FINANCIAL BENEFIT GAINED FROM COMMITTING THE OFFENCE(S)

Not applicable (Score = 0)	Minor (Score = 10)	Moderate (Score = 20)	Serious (Score = 30)	Severe (Score = 40)	TOTAL
Negligible financial impact.	Low to moderate financial impact.	Medium level financial impact.	Large financial impact.	Maximum financial impact available.	

## STAGE FIVE – DETERRING THE OFFENDER FROM REPEATING THE OFFENCE AND OTHERS FROM COMMITTING SIMILAR OFFENCES

Not applicable (Score = 0)	Minor (Score = 5)	Moderate (Score = 10)	Serious (Score = 15)	Severe (Score = 20)	TOTAL
Little or no deterrence likely. Repeat offending possible.	Low ass level offence, unlikely to be reported on. Mild deterrence.	Some publicity may result. Will act as a deterrent from repeating offence(s).	Publicity will be sought. Large deterrence to offender and landlord community.	Publicity inevitable via numerous methods. Massive deterrence to re-offending and to wider landlord community.	

## STAGE SIX – ASSESSMENT OF ASSETS AND INCOME

Not applicable (Score = 0)	Minor (Score = 5)	Moderate (Score = 10)	Serious (Score = 15)	Severe (Score = 20)	TOTAL
No demonstrable or significant assets. Does not apply to agents.	Low asset value (single property landlord, for example). Does not apply to agents.	Small portfolio / agent (5 properties or less) and /or moderate assets / income.	Small / medium portfolio landlord / agent (3-10 properties) with other assets / income. Two or more major mitigating factors.	Large portfolio landlord / agent. Wider assets / income considered.	

## STAGE SEVEN – MITIGATION

(This score will be subtracted from the overall matrix score)

Not applicable (Score = 0)	Minor (Score = 5)	Moderate (Score = 10)	Serious (Score = 15)	Severe (Score = 20)	TOTAL
None.	Minor mitigating factors.	One major mitigating factor or multiple minor mitigating factors.	Two or major mitigating factors.	Multiple major mitigating factors.	

## Relationship between ‘Scoring Matrix’ and the level of Civil Penalty

- 7.6 Each offence will be assessed and the totality principle will then be applied.
- 7.7 An assessment will be carried out before the Notice of Intent is issued, and a reassessment will then be carried out following receipt of any representations.
- 7.8 The starting point for determining the civil penalty will be the scores from the Civil Penalty Scoring Matrix (see Pages 15 -18):

Score range	Size of civil penalty (where the penalty must not exceed £5,000)	Size of civil penalty (where the penalty must not exceed £30,000)
0 – 10	£ 40	£ 250
11 – 20	£ 80	£ 500
21 – 40	£ 125	£ 750
41 – 60	£ 160	£ 1,000
61 – 80	£ 400	£ 2,500
81 – 100	£ 800	£ 5,000
101 – 120	£1,600	£10,000
121 – 140	£2,500	£15,000
141 – 160	£3,300	£20,000
161 – 180	£4,100	£25,000
181 – 200	£5,000	£30,000

## 8. Financial means to pay a Civil Penalty

- 8.1 In setting a civil penalty, the Council may conclude that the offender is able to pay any financial penalty imposed, unless the offender has supplied suitable and sufficient financial information to the contrary.
- 8.2 It is for the offender to disclose to the Council such data relevant to their financial position as will enable the Council to assess what s/he can reasonably afford to pay.
- 8.3 Where the Council is not satisfied that it has been given sufficient reliable information, it will be entitled to draw reasonable inferences as to the offender’s financial means from the evidence it holds and from all of the circumstances of the case which may infer that the offender can afford to pay any financial penalty.
- 8.4 As many offenders may own one or more properties in Northampton, it is likely that they could have assets that they can sell or borrow against. After taking into account any mortgages on such properties, the Council may find it appropriate in the circumstances of the case to determine the amount of equity that could potentially be released from the property if it were to be sold on the open market. If an offender to whom this applies claims that they are unable to pay a financial penalty and demonstrates that they have only a low income, consideration will be given to the likely amount of equity that could be released, if any of the properties were to be sold or refinanced, when deciding upon an appropriate level of civil penalty.

## **9. Prompt payment discount for paying Civil Penalty within 28 days**

- 9.1 In order to encourage the prompt payment of civil penalties, the Council will offer a 20% discount to landlords and agents who pay the civil penalty in full within 28 days of the Final Notice being issued. The 2 amounts will be included in the Final Notice.

## **10. Other consequences of the imposition of a Civil Penalty**

- 10.1 Where a civil penalty has been imposed on a landlord or agent, this will form part of the Council's consideration when it reviews the HMO licence applications relating to properties in which that person has had some involvement.
- 10.2 Although the imposition of a civil penalty will not automatically preclude the Council from granting a licence where such persons are involved, the reasons for imposing the penalty and the extent of the person's involvement in the property will be considered when deciding whether or not to grant an HMO licence.
- 10.3 Where a landlord has two civil penalties imposed on them within a period of 12 months and each relates to a Banning Order offence for the purposes of the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018, the Council will seek to register the landlord's details on the Database of Rogue Landlords and Property Agents.

## **11. Collection of unpaid Civil Penalties**

- 11.1 It is the policy of Northampton Borough Council to consider all legal options available for the collection of unpaid civil penalties and to pursue unpaid penalties in all cases through the County Court.
- 11.2 Some of the Orders available to the Council through the County Court are as follows:
- A Warrant of Control for amounts up to £5000;
  - A Third Party Debt Order;
  - A Charging Order, and;
  - Bankruptcy or insolvency.
- 11.3 A Certificate, signed by the Council's Chief Finance Officer and stating that the amount due has not been received by the date of the Certificate, will be accepted by the Courts as conclusive evidence of the payment due.
- 11.4 Where a Charging Order has been made, and the amount of the Order is more than £1,000, the Council can consider applying for an Order for Sale against the property or asset in question. When considering which properties to apply for a Charging Order against, the Council can consider all properties owned by the landlord and not just the property to which the offence relates.

11.5 Where the civil penalty is appealed and Tribunal confirms or varies the penalty, the decision will be automatically registered on the Register of Judgments, Orders and Fines when it is accepted by the County Court. Inclusion on the Register may make it more difficult for the Landlord to obtain financial credit.

## **12. Guidance**

12.1 This Policy has been developed with specific regard to:

- **The Housing Act 2004**
- **The Housing and Planning Act 2016**
- **Civil penalties under the Housing and Planning Act 2016  
Guidance for Local Housing Authorities** - Department for Communities and Local Government published April 2017
- **Private Sector Housing Enforcement Policy** - Northampton Borough Council